

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI

IN RE:	)	Case No. 1:18-bk-12585
	)	
Suzanne Bair	)	Chapter 7
	)	
Debtor	)	<b>Hon. Beth A. Buchanan</b>
	)	<b>U.S. Bankruptcy Judge</b>

**MOTION OF UNITED STATES TRUSTEE FOR ORDER DIRECTING  
THE CUSTODIAN OF RECORDS FOR RAFTERHAUS CONSTRUCTION, LLC TO  
APPEAR FOR FED. R. BANKR. P. 2004 EXAMINATION AND FOR PRODUCTION OF  
DOCUMENTS**

Daniel M. McDermott, United States Trustee for Region 9 (“U.S. Trustee”), pursuant to FED. R. BANKR. P. 2004, requests this Court to enter an order directing the Custodian of Records of Rafterhaus Construction, LLC, to Appear at the Office of the United States Trustee, 36 East Seventh Street, Suite 2030, Cincinnati, OH 45202 on **December 28, 2018, at 10:00 a.m.**, (or any other date mutually agreeable to the parties) to be examined under oath and produce documents with respect to the certain issues of the Debtor’s assets, liabilities, income, and expenses as outlined in Debtor’s Petition, Schedules, Statements, Amendments, and ancillary documents in the U.S. Trustee’s possession. In support of this Motion, the U.S. Trustee respectfully submits the following Memorandum in Support.

Dated: December 13, 2018

DANIEL M. MCDERMOTT  
UNITED STATES TRUSTEE FOR REGION 9

by: /s/ Benjamin A. Sales  
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MEMORANDUM IN SUPPORT

FED. R. BANKR. P. 2004 provides in relevant part that that “on motion of any party in interest, the Court may order the examination of any entity “relating to the “acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate, or to the debtor’s right to a discharge.”

The Debtor filed a voluntary Chapter 7 Petition on July 3, 2018. The U.S. Trustee requested documentation from the Debtor related to her financial condition and her business interests. Based on the U.S. Trustee’s requests, the Debtor produced a significant amount of documentation in October of 2018, which the U.S. Trustee reviewed. After that review, the U.S. Trustee determined an examination of Custodian of Records of Rafterhaus Construction, LLC (“Rafterhaus”) is necessary to further investigate Debtor’s assets, liabilities, income, and expenses.

Judith Hackler, who resides with the Debtor and upon information and belief is the Debtor’s mother, is the Statutory Agent for Rafterhaus, an Ohio company that was formed on September 12, 2017. Upon information and belief, Rafterhaus does substantially the same kind of construction and development work as Debtor’s business, Bair Build Company, LLC. The U.S. Trustee needs to conduct a Rule 2004 examination of Rafterhaus’s Custodian of Records to determine whether the Debtor has an equitable interest in, receives income from, or is otherwise involved with Rafterhaus. This information is needed to determine whether further action is necessary under 11 U.S.C. § 727 or other provisions of the United States Bankruptcy Code.

In addition to ordering testimony, the U.S. Trustee requests an Order for the following production of documents related to Rafterhaus Construction, LLC:

1. A copy of the monthly statements for any bank or credit union account that Rafterhaus Construction LLC had an interest in, for the period January 1, 2016 to the present.
2. lists of shareholders, copies of all cancelled checks for the last two years of the entity’s operation, reports of any monies or other consideration disbursed to shareholders/partners/members in the last two years of the entity’s operation, profit & loss/income statements for the last two years of the entity’s operation, and any and all books and records kept by the business entity in its normal course of business in the last two years:

3. Federal and state tax returns, including all schedules and attachments for 2017.

Examination is the traditional means of discovery in bankruptcy.<sup>1</sup> Rule 2004 provides a tool whereby the U.S. Trustee can obtain information about a debtor's financial condition, and any other matter that affects the administration of the estate or a debtor's right to discharge.<sup>2</sup> Bankruptcy courts have broad discretion in determining whether to order a Rule 2004 examination.<sup>3</sup> In *Fearn*, Judge Cole noted the following when describing the scope of an examination:

"It is well-established that the scope of a Rule 2004 examination is very broad and great latitude of inquiry is ordinarily permitted. The scope of examination permitted pursuant to Rule 2004 is wider than that allowed under Federal Rules of Civil Procedure and can legitimately be in the nature of a "fishing expedition." Although the primary purpose of a Rule 2004 examination is to permit a party in interest to quickly ascertain the extent and location of the estate's assets, such examination is not limited to the debtor or his agents, but may properly extend to creditors and third parties who have had dealings with the debtor."<sup>4</sup>

Questions have arisen regarding the Debtor's connection to Rafterhaus, which inquiries may be explained in testimony and through documents provided by Rafterhaus's Custodian of Records. This testimony could help the U.S. Trustee determine if the Debtor abused the bankruptcy system or its procedures when her Petition was filed.

WHEREFORE, the United States Trustee respectfully requests that pursuant to FED. R. BANKR. P. 2004, the Custodian of Records for Rafterhaus be ordered to appear and submit to examination under oath at the time and place stated herein, produce documents requested herein,

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<sup>1</sup> FED. R. BANKR. P. 2004 ("Bankruptcy Rule 2004" and/or "Rule 2004").

<sup>2</sup> FED. R. BANKR. P. 2004(b); *see also*, *In re DeShetler*, 453 B.R. 295, 301 (Bankr. S.D. Ohio 2011).

<sup>3</sup> *Id.*, citing *Bank One, Columbus NA v. Hammond (In re Hammond)*, 140 B.R. 197, 201 (S.D. Ohio 1992); *In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702, 708-09 (Bankr. S.D. N.Y. 1991); and *In re Fearn*, 96 B.R. 135 (Bankr. S.D. Ohio 1989).

<sup>4</sup> *DeShetler* at 301-302, citing *Fearn* at 137-138.

and for such other relief as is just and proper.

Dated: December 13, 2018

DANIEL M. MCDERMOTT  
UNITED STATES TRUSTEE FOR REGION 9

by: /s/ Benjamin A. Sales  
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CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2018, a copy of the foregoing MOTION OF UNITED STATES TRUSTEE FOR ORDER DIRECTING CUSTODIAN OF RECORDS FOR RAFTERHAUS CONSTRUCTION LLC TO APPEAR FOR FED. R. BANKR. P. 2004 EXAMINATION AND FOR PRODUCTION OF DOCUMENTS was served on the following registered ECF participants, electronically through the Court's ECF System at the e-mail address registered with the Court:

Robert A. Goering, Esq.  
Attorney for the Debtor

Eileen Field., Esq.  
Chapter 7 Trustee

By U.S. Mail:

Suzanne Bair  
1800 Tanglewood Dr.  
Loveland, OH 45140

Judith A Hackler  
Statutory Agent for Rafterhaus Construction, LLC  
1800 Tanglewood Dr.  
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/s/ Benjamin A. Sales  
Benjamin A. Sales